

adopted by the Appeals Board.

ISSUES

- (1) Whether written claim was timely made;
- (2) Whether claimant's application for hearing was timely filed;
- (3) The nature and extent of claimant's disability; and
- (4) Whether claimant is entitled to future medical expense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein and in addition to the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

- (1) Claimant has failed in his burden of proof in showing he filed a timely written claim pursuant to K.S.A. 44-520a.

K.S.A. 44-520a states in part:

"(a) No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation; ..."

Claimant, a construction worker, fell on December 5, 1989, while working for the respondent, breaking his left and right wrists and right fifth toe. By claimant's own admission, he suffered no permanent impairment to the left wrist or the foot as a result of this fall. The only issue regards what, if any, impairment he may have suffered to the right wrist as a result of the fall.

Claimant was referred to Dr. Richard B. Baker, a board certified orthopedic surgeon for treatment of his injuries. After a series of treatments claimant was examined by Dr. Baker on May 8, 1990, and released to return on a PRN basis. Claimant returned to Dr. Baker on May 23, 1991, to discuss his ongoing complaints. Dr. Baker provided no treatment at that time but prescribed aspirin for claimant's pain complaints. Claimant sought no further treatment by Dr. Baker and at the time of the regular hearing did not consider himself to be under Dr. Baker's care. Claimant received medical care from his father, a chiropractor, with this care being clearly unauthorized by the respondent and insurance carrier.

Whether a claim for compensation is timely filed under K.S.A. 44-520a is a question of fact. Fitzwater v. Boeing Airplane Co., 181 Kan. 158, 165, 309 P.2d, 681 (1957). The furnishing of medical care by the employer or carrier is tantamount to the payment of compensation. Dexter v. Wilde Tool Co., 188 Kan. 816, 818, 365 P.2d 1092 (1961). An employee's procurement of his or her own medical treatment is not the equivalent of compensation payments and the statute of limitations for purpose of written claim will not

be tolled. Solorio v. Wilson & Co., 161 Kan. 518, 169 P.2d 822 (1946). A claim is not revived if medical treatment is furnished after the statutory period for filing written claim has expired. Rutledge v. Sandlin, 181 Kan. 369, 310 P. 2d 950 (1957).

A long history of case law clearly sets out the statutory requirements under K.S.A. 44-520a. Claimant filed written claim on December 15, 1992, when the application for hearing was filed with the Division of Workers Compensation in Topeka, Kansas. No additional evidence was admitted into the record to show written claim was filed prior to December 15, 1992.

As it is well beyond 200 days from May 23, 1991, to December 15, 1992, it is the finding of the Appeals Board that claimant has failed to prove timely written claim was served upon the respondent pursuant to K.S.A. 44-520a.

Claimant cites Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 516 P.2d 1008 (1973) as controlling in this situation. The Appeals Board disagrees. In Blake, the respondent and insurance carrier authorized a treating physician to provide care to the injured claimant. When the authorized treating physician referred claimant to other doctors for additional care and treatment, these referrals were also authorized. In Blake, care and treatment by one of these referred physicians was provided to the claimant within 200 days of the filing of timely written claim. The insurance carrier refused to pay for these later referrals. The court held that where an employer and insurance carrier had once authorized a course of treatment for a workman they cannot effect a "suspension" of such compensation, and start the workman's claim time running, merely by failing to pay medical bills as they are received. At least where the respondent is on notice that the workman is seeking additional treatment on the assumption that he is still covered they are under a positive duty to disabuse him of that assumption if they intend to rely on the 200 day statute. Id. at 515.

In the present case the claimant, by his own admission, no longer considered himself to be under Dr. Baker's care. It is noted that a year and seven months expired between the last examination by Dr. Baker on May 23, 1991, and the filing of the written claim on December 15, 1992. This is well beyond the statutory limits allowed.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Award of Administrative Law Judge James R. Ward dated February 23, 1994, is reversed and that an award of compensation in favor of the claimant, Troy Anderson, and against Coonrod Construction and Associates and its insurance carrier, Aetna Casualty and Surety, is denied due to claimant's failure to file written claim in a timely fashion pursuant to K.S.A. 44-520a.

The Appeals Board further finds that the additional issues raised in this matter are rendered moot as a result of the above decision.

Fees necessary to defray the expense of administration of the Kansas Workers Compensation Act are hereby assessed against the respondent and insurance carrier to be paid direct as follows:

OWENS, BRAKE & ASSOCIATES	\$ 158.25
CORRELL REPORTING SERVICE	\$ 86.75

IT IS SO ORDERED.

Dated this _____ day of May, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: W. Thomas Stratton, 420 W 33rd, Topeka, Kansas 66611
John D. Jurcyk, PO Box 14548, Lenexa, Kansas 66285
James R. Ward, Administrative Law Judge
George Gomez, Director